

In reply refer to
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EXEMPTIONS	

My dear Mr. Scott-Hansen:

I refer to our recent conversation with respect to a letter, which you left with me, from Mr. Bernt Lund, concerning the interpretation of certain provisions of the Treaty of Friendship, Commerce and Navigation between the United States and Japan. You requested for transmittal to Mr. Lund such explanatory information respecting these provisions as the Department is in a position to furnish.

The exposition which follows is provided on an informal basis:

General

The treaty with Japan was negotiated on the basis of a standard draft developed by the United States Government for use generally in negotiating such treaties with all countries. Its shipping provisions, except for minor adjustments agreed to at Japanese request during negotiation, follow closely the standard provisions which are approved by American shipping interests, as representing the kind of material considered to be generally satisfactory and feasible in this type treaty. No attempt was made to devise any special provisions for Japan.

Preamble

The phrase "unconditionally accorded" is designed to indicate that the most-favored-nation clauses of this treaty, except where otherwise indicated should be given the unconditional interpretation: that is, advantages now or hereafter accorded by either country to any third country are to accrue to the other automatically and without compensation. While this rule of interpretation may be presumed to be that favored

generally

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generally by the two countries in commercial matters, it was not inserted in this treaty out of any conscious purpose of clarifying the interpretation of other treaties.

Article XII

This article is designed to provide for the rights of all persons and companies affected by exchange regulations, including shipping enterprises. The word "transport", as found in paragraph 4, specifically is designed to cover ocean shipping as well as other means of transportation.

Article 17

It is correct that the provisions of Article 21, paragraph 1(c), constitute a reservation to this article, as well as to the other provisions of the treaty. Article 21, paragraph 1(c) reads as follows:

"The present treaty shall not preclude the application of measures regulating the production of or traffic in arms, ammunition and implements of war, or traffic in other materials carried on directly or indirectly for the purpose of supplying a military establishment."

Protocol 10

With reference to the effect of Protocol 10, it is difficult to hazard an opinion as to the correct result in a future hypothetical situation. The object of Article 17, paragraph 1, is to assure that a government in its trading operations behave as though it were a private firm interested in profit and not influenced by uneconomic political motives or a desire to practice arbitrary discrimination or favoritism. The rule of the treaty obviously does not provide an automatic answer to all situations that may arise, as there remains an area for the exercise of judgment as to which of several possible alternative courses would be most advantageous from the purely commercial standpoint in a given case.

Article 18, paragraph 1

On the basis of existing information it is not expected that this provision will affect existing practices and arrangements in the shipping field. Article 18, paragraph 1 reads as follows:

"The two Parties agree that business practices which restrain competition, limit access to markets or foster monopolistic control, and which are engaged in or made effective by one or more private or public commercial enterprises or by combination,

agreement

agreement or other arrangement among such enterprises, may have harmful effects upon commerce between their respective territories. Accordingly, each Party agrees upon the request of the other Party to consult with respect to any such practices and to take such measures as it deems appropriate with a view to eliminating such harmful effects."

Article 22, paragraph 2

It is contemplated that the most-favored-nation clause assure equality at all times regardless of when the advantage claimed may have been originally granted to the third country.

Protocol 11

It is correct that this provision assures that United States practice with respect to carriage of the mails is unaffected by the treaty. This is a standard feature of United States treaties. No question of Japanese practice in this regard arose.

I hope that the above information will be of some assistance to Mr. Lund with respect to the questions which have arisen concerning this FCN treaty.

Sincerely yours,

J. E. Saugstad
Chief
Shipping Policy Staff

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